UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

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U.S. DISTRICT COURT
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UNITED STATES OF AMERICA
<u>EX REL.</u>
M. GLENN OSTERHOUDT, III

PLAINTIFF

VS.

AMOCO PRODUCTION COMPANY; BURLINGTON RESOURCES OIL & GAS, INC.; CHEVRON USA, INC.; ENRON OIL AND GAS CO.; EXXON COMPANY USA, INC.; MOBIL EXPLORATION AND PRODUCTION, USA, INC.; SHELL OFFSHORE, INC.; AND TEXACO EXPLORATION AND PRODUCTION, INC.; AND THEIR RESPECTIVE DIVISIONS, SUBSIDIARIES AND AFFILIATES

DEFENDANTS

Case No. 9:98 CV101

JUDGE HANNAH

SEALED

<u>Filed Under Seal</u>

FIRST AMENDED COMPLAINT FOR DAMAGES
<u>AND OTHER RELIEF UNDER THE FEDERAL FALSE CLAIMS ACT</u>

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES **M. GLENN OSTERHOUDT** (herein called "Plaintiff" or "Relator") on behalf of himself and in the name of and on behalf of the United States of America and files this his First Amended Complaint for Damages and Other Relief Under the Federal False Claims Act complaining of the named Defendants and their respective divisions, subsidiaries and affiliates, and in support thereof would show the Court as follows:

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I.

INTRODUCTION

1. Defendants are responsible for paying royalties to the United States of America on natural gas produced from federal oil and gas leases covering lands situated under offshore Texas and Louisiana. Defendants have based these royalties on artificially low values for the gas produced from said leases and have misrepresented to the United States of America the true value of the gas through fraudulent filings and misrepresentations as to the actual value of the gas as required by federal statutes and the regulations promulgated thereunder. Defendants have masked the true value of the gas by selling the gas to their marketing or other affiliates at an artificially low price and then having such affiliate sell the gas pursuant to a non arms-length contract to another affiliate of the Defendant at a greatly increased price while paying royalties to the United States of America based upon the artificially low price paid to the Defendants by the marketing or other affiliate. Through the use of marketing and other affiliates, Defendants have defrauded the United States of America of its rightful share of gas royalties by paying royalties.

2. Specifically, the Relator, in the name of the United States of America, has brought this action to recover damages and penalties attributable to, among other things, a calculated, carefully developed and coordinated scheme whereby the Defendants and their affiliates and subsidiaries, for a period of time in excess of ten years, unlawfully defrauded the United States of its lawful share of natural gas royalties by paying royalty on artificially low prices which were less than the reasonable market value of such gas.

3. The Defendants are large, fully integrated, major oil companies operating in the United States. The Defendants have underpaid royalties to the United States by calculating the royalty based on fraudulently low prices as opposed to on a reasonable fair market value for the

natural gas as required by law. In furtherance of these fraudulent acts, Defendants have filed with the United States, records and documents contained false and fraudulent statements concerning the value of the gas produced and the royalties payable thereon. Defendants have certified to the accuracy of these records and documents.

4. Through his twenty years experience in the oil industry, formal education and unique access to information, the Relator has knowledge of unlawful schemes and conduct by the Defendants including, but not limited to:

> (i) misrepresenting that the price received for the natural gas produced from federal oil and gas leases covering lands under offshore Texas and Louisiana, sold under buy/sell agreements between themselves and affiliated companies was the fair and reasonable value of the natural gas;
>
> (ii) selling natural gas at the wellhead to affiliates at values less than otherwise available to the Defendants, considering factors such as size and sophistication of the company, capital resources available to develop, explore and produce natural gas, and in particular, the mass deliverable volume(s) of gas available to market; and
>
> (iii) using self-dealing sales to affiliates to mask the true reasonable market value of the gas.

II.

JURISDICTION AND VENUE

5. This action is brought under the Federal False Claims Act, 31 U.S.C. § 3729 et seq., (the "Act") to recover treble damages, civil penalties, costs of suit, including reasonable attorneys' fees, and to obtain ancillary relief.

6. This Court has jurisdiction over this cause of action under 31 U.S.C. § 3732(a) and 28 U.S.C. §§ 1331 and 1345 because this is a civil action which arises under the laws of the United States.

7. Relator is authorized to bring these claims on behalf of the United States pursuant to 31 U.S.C. § 3730(b).

8. Venue is proper in the Eastern District of Texas under 31 U.S.C. § 3732(a) because one or more of the Defendants can be found, resides or transacts business in the Eastern District of Texas and because one or more of the acts proscribed by 31 U.S.C. § 3729 occurred in the Eastern District of Texas.

III.

PARTIES

A. The Relator

9. M. Glenn Osterhoudt, III is a resident of Weatherford, Texas. Relator Osterhoudt is a 6th generation native Texan, a 3rd generation oil man and has had 20 years personal experience in the oil industry ranging from rough-necking offshore, mud engineer (IMCO Services), mud consultant (Arco, Conoco), and currently, independent oil producer. Relator Osterhoudt is a graduate of Texas Wesleyan School of Law, located in Fort Worth, Texas. In addition, Osterhoudt has been granted several U.S. Patents for natural gas related inventions and in 1991 received a grant from the U.S. Department of Energy to field test a method to revive and/or increase the flow of marginal gas wells. In his capacity as independent producer, Osterhoudt gained knowledge relating to Defendants' conduct which is the subject matter of this action. Relator Osterhoudt has generated, and voluntarily provided to the Department of Justice ("DOJ"), direct personal work product, significant and sufficient in magnitude relating to the fair market value of natural gas produced from Outer Continental Shelf ("OCS") oil and gas leases off the coasts of Texas and Louisiana. The information has provided the DOJ with a prima facie case against the Defendants. Specifically, the information establishes the disparity between what the Defendants paid the United States as royalty

royalty and what lawfully should have been paid, thus triggering a cause of action. The personal work product, establishing this disparity, is not in the public domain, therefore it is free of public disclosure. The Relator is the "Original Source" of information as said defined in 31 U.S.C. § 3720(e)(4)(B) and brings this civil action for violations of 31 U.S.C. § 3729 on behalf of the United States pursuant to 31 U.S.C. §3730(b)(1). Moreover, Relator has met all of the statutory requirements predicated to filing this complaint including voluntarily providing the information to the United States as set forth in 31 U.S.C. §3730 (e)(4)(B).

B. **Defendants**

10. Amoco Production Company is a Delaware corporation duly qualified to do business in Texas that may be served through its registered agent, CT Corporation System, 811 Dallas Avenue, Houston, Texas 77002.

11. Burlington Resources Oil & Gas, Inc. is a Delaware corporation duly qualified to do business in Texas that may be served through its registered agent, CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

12. Chevron U.S.A., Inc. is a Pennsylvania corporation duly qualified to do business in Texas that may be served through its registered agent, Prentice-Hall Corporation System, 400 North St. Paul Street, Dallas, Texas 75201.

13. Enron Oil and Gas Co. is a Delaware corporation duly qualified to do business in Texas that may be served through its registered agent, CT Corporation System, 811 Dallas Avenue, Houston, Texas 77002.

14. Exxon Company USA, Inc. is a New Jersey corporation duly qualified to do business in Texas that may be served through its registered agent, John F. Tully, 800 Bell, Houston, Texas 77002.

15. Mobil Exploration and Production USA, Inc. is a Nevada corporation duly qualified to do business in Texas that may be served through its registered agent, Prentice-Hall Corporation System, 400 North St. Paul Street, Dallas, Texas 75201.

16. Shell Offshore, Inc. is a Delaware corporation duly qualified to do business in Texas that may be served through its registered agent, CT Corporation System, 811 Dallas Avenue,. Houston, Texas 77002.

17. Texaco Exploration and Production, Inc. is a Delaware corporation duly qualified to do business in Texas that may be served through it registered agent, Prentice-Hall Corporation System, 400 North St. Paul Street, Dallas, Texas 75201.

IV.

FACTUAL BACKGROUND

18. The United States owns and/or controls the oil, gas and other minerals in, on and under certain OCS lands located off the coasts of Texas and Louisiana.

19. The United States leases said OCS lands for the exploration and production of oil and gas to various corporations and entities in the oil and gas industry.

20. The Defendants are all lessees of or the owners of working interests or operating interests in certain leases covering the oil and gas under the OCS lands off the coasts of Texas and Louisiana belonging to or administered by the United States Government.

21. As lessees of or owners of working interests or operating interests in said leases, the Defendants are legally obligated under the provisions of the leases, and the applicable federal statutes and regulations promulgated thereunder, to account for and pay to the United States Government the royalties on gas produced from the OCS lands as provided in the leases, statutes and regulations.

22. The OCS leases provide that the royalty shall be paid on the value of production as such value is determined by the United States.

23. The Code of Federal Regulations (CFR) provides that the value of production, for royalty purposes, of unprocessed gas is the value of the unprocessed gas determined under 30 CFR § 206.152 less applicable allowances. The value of unprocessed gas depends upon whether or not the gas is sold pursuant to an arms-length contract. An arms-length contract is defined as a contract or agreement that has been arrived at in the marketplace between independent, non-affiliated persons with opposing economic interests regarding that contract. Two persons are affiliated if one person controls, is controlled by, or is under common control with another person.

24. 30 CFR 206.152(b)(1)(i) provides that the value of unprocessed gas sold under an arms-length contract is, with certain exceptions, the gross proceeds accruing to the lessee from the sale or disposition of such gas.

25. 30 CFR §152(c) provides that the value of unprocessed gas which is not sold pursuant to an arms-length contract shall be the reasonable value of such gas determined in accordance with the first applicable of the following methods:

> (1) Gross proceeds accruing to the lessee pursuant to a sale under its non-arms-length contract or other disposition other than by arms-length contract, provided that such gross proceeds are equivalent to the gross proceeds derived from or paid under comparable arms-length contracts for purchases, sales or other dispositions of the like quality gas in the same field.
>
> (2) A value determined by consideration of other information relevant in valuing like quality gas, including gross proceeds under arms-length contracts for like quality gas in the same field or nearby fields or areas, posted prices for gas, prices received in arms-length spot sales of gas, other reliable public sources of price or market information, and other information as to the particular lease operation or the saleability of the gas.
>
> (3) A net back method or any other reasonable method to determine value.

30 CFR § 206.152 (c)(1), (2) & (3)

26. Marketing affiliate is defined in 30 CFR § 206.151 as an affiliate of the lessee whose function is to acquire only the lessee's production and to market that production. 30 CFR 206.152 (b)(1)(i) provides that gas which is sold or otherwise transferred to the lessee's marketing affiliate and then sold by the marketing affiliate pursuant to an arms-length contract shall be valued based upon the gross proceeds accruing to the marketing affiliate upon the sale by the marketing affiliate.

27. If the first sale of the gas is made to a marketing affiliate of the lessee and then the marketing affiliate sells the gas pursuant to an arms-length contract, the value of the production, for royalty purposes, is the gross proceeds accruing to the marketing affiliate less applicable allowances.

If the first sale of the gas is made pursuant to a non-arms-length contract to an entity other than a marketing affiliate or if the first sale of the gas is made to a marketing affiliate and then the marketing affiliate sells the gas pursuant to a non-arms-length contract (to an affiliate of the marketing affiliate) the value of production for royalty purposes is the reasonable value of the gas as determined pursuant to 30 CFR § 206.152(c), less applicable allowances.

28. The reasonable value of the gas sold pursuant to a non-arms-length contract is determined pursuant to 30 CFR § 206.152(c). If the gross proceeds accruing to the lessee or marketing affiliate are equivalent to the gross proceeds derived from or paid under comparable arms-length contracts for purchases, sales or other dispositions of like quality gas in the same field, then such gross proceeds are equivalent to reasonable value. If such gross proceeds are not equivalent to the gross proceeds derived from or paid under comparable arms-length contracts for purchases, sales or other dispositions of like quality gas in the field, then the reasonable value of the gas is determined by consideration of other relevant information, the most important of which being the

gross proceeds under arms-length contracts for like quality gas in the same field or nearby fields or areas.

29. The Defendants have sold their unprocessed gas to their affiliates or marketing affiliates at an artificially low price and have paid royalties to the United States based upon these artificially low prices.

30. These affiliate or marketing affiliates of the Defendants have then sold or otherwise transferred such unprocessed gas to another affiliate or to a third party pursuant to a non-arms-length contract.

31. When the Defendants sold the gas to an affiliate that was not a marketing affiliate or when the Defendants sold the gas to a marketing affiliate and then the marketing affiliate sold or otherwise transferred the gas to another affiliate or to anyone else pursuant to a non-arms-length contract, the Defendants should have paid royalty to the United States based upon the reasonable value of the gas as determined pursuant to 30 CFR §206.152(c), less applicable allowances.

32. At least since 1988, the value of the unprocessed gas on which the Defendants have paid royalties to the United States has been less than the true value of such gas as determined by the applicable statues and regulations.

33. Defendants have had actual knowledge of the value of the gas produced by them from the leases in which they own an interest as determined by the applicable statutes and regulations and have known that these values have been greater than the values upon which they have made their royalty payments to the United States Government.

34. The collection of United States' royalties from federal lands is administered by the Minerals Management Service ("MMS") of the United States Department of the Interior ("DOI").

35. The United States, through the MMS, requires each lessee to file a monthly report (Form MMS-2014; "Report of Sales and Royalty Remittance") of sales and royalty remittances for the proceeding production month. This report form requires the lessee to state the sales values and volumes at which the royalties have been calculated for royalty payments.

36. Form MMS-2014 bears the following statement:

> "WARNING: this is to inform you that failure to report accurately and timely in accordance with the statutes, regulations, or terms of the lease, permit, or contract may result in late payment charges, civil penalties, or liquidated damages being assessed without further notification. Intentional false or inaccurate reporting is subject to criminal prosecution in accordance with applicable Federal law(s)."

37. In addition, Form MMS-2014 has a signature line which bears the following statement:

> "I have read and examined the statements in this report and agree that they are accurate and complete."

38. As to each lease covering OCS lands in which a Defendant has had an interest, each MMS-2014 monthly report form filed by such Defendant has knowingly and falsely stated the amounts owed by the Defendant to the United States Government in order to conceal, avoid or decrease such Defendant's obligation to pay or transmit money to the United States.

39. Item 16 of Form MMS-2014 is entitled "Sales Value". Line item 16 on each monthly Form MMS-2014 filed by each Defendant has been a knowingly false statement and a separate violation of the False Claims Act for which a civil penalty lies; Relator seeks to recover from each Defendant herein the maximum civil penalty for each such separate violation.

40. Item 18 of Form MMS-2014 is entitled "Royalty Value". Each such line item 18 on each monthly Form MMS-2014 filed by each Defendant has been a knowingly false statement and

a separate violation of the False Claims Act for which a civil penalty lies; the Relator seeks to recover from each Defendant herein the maximum civil penalty for each such separate violation.

V.

CAUSES OF ACTION

COUNT I

41. The preceding factual statements and allegations are incorporated herein by reference.

42. Through their unlawful conduct, as described in this complaint, the Defendants have knowingly presented, or caused to be presented, to an officer or employee of the United States a false or fraudulent claim for payment or approval.

43. These false and fraudulent claims have been made in various documents filed with the United States including, but not limited to, Form MMS-2014, and other various records which were fraudulently developed to support Form MMS-2014 filings and other documents filed with the United States.

44. The Defendants' unlawful conduct is continuing and thus threatens to deprive the United States of its legal entitlement to its rightful share of gas royalties on the leased properties.

COUNT II
[False Claims Act - 31 U.S.C. § 3729(a)(2)]

45. The preceding factual statements and allegations are incorporated herein by reference.

46. Through their unlawful conduct, as described in this complaint, the Defendants have made, used or caused to made or used, a false record or statement to get a false or fraudulent claim paid or approved by the United States.

47. These false and fraudulent records and/or statements have been made in documents including, but not limited to, Form MMS-2014.

48. The Defendants' unlawful conduct is continuing in nature and thus threatens to deprive the United States of its legal entitlement to its rightful share of royalties on the leased properties.

COUNT III
[False Claims Act - 31 U.S.C. § 3729(a)(7)]

49. The preceding factual statements and allegations are incorporated herein by reference.

50. The Defendants have knowingly made, used or caused to be made or used, a false record or statement to illegally decrease their obligation to the United States to pay their full share of royalties.

51. The Defendants' unlawful conduct is continuing in nature and thus threatens to deprive the United States of its legal entitlement to its rightful share of royalties on the leased properties.

WHEREFORE, PREMISES CONSIDERED, the Relator, on behalf of himself and the United States of America, prays that the Defendants be cited to appear and answer herein and, upon final trial or hearing of this cause, judgment be awarded to Relator on behalf of himself and the United States against the Defendants, jointly and severally, for:

(i) all actual, incidental and/or consequential damages (in the form of underpaid royalties) sustained by the United States;

(ii) treble damages pursuant to 31 U.S.C. § 3729(a);

(iii) civil penalties pursuant to 31 U.S.C. § 3729(a); and

(iv) post-judgment interest at the highest legal rates, where applicable; and

that

(i) the Relator be awarded reasonable and necessary attorneys' fees, litigation expenses and court costs through the trial and any appeals of this case;

(ii) in the even that the United States intervenes in and proceeds with this action, the Relator be awarded an amount for originating this action of at least 15%, but not more than 25% of the proceeds of the action or settlement;

(iii) in the event that the United States does not intervene in and proceed with this action against all Defendants, the Relator be awarded an amount for originating and prosecuting this action and collecting the civil penalties and damages, which shall be not less than 25% nor more than 30% of the proceeds of the action or settlement;

(iv) he be awarded post-judgment interest at the highest legal rates, where applicable; and

(v) such other and further relief, both at law and in equity, to which the Relator and the United States are justly entitled.

Respectfully Submitted,

WOODWARD SHAW & HOWELL
a Professional Corporation

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CERTIFICATION

I hereby certify that a copy of the foregoing Notice of Appearance was mailed this 1st day of December, 1999 to **O. Kenneth Dodd**, Assistant U.S. Attorney for the Eastern District of Texas, 350 Magnolia Avenue, Beaumont, TX 77701-2237, and to **Michael D. Granston**, Attorney in Charge, U.S. Department of Justice, P.O. Box 261, Ben Franklin Station, Washington, D.C. 20044.

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